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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,710	01/30/2002	Joseph Vistitsky	30193/10000	8200
4743	7590	06/04/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			MORRISON, NASCHICA SANDERS	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/060,710

Applicant(s)

VISTITSKY ET AL.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13,36-46,51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13,36-46,51 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the third Office Action for serial number 10/060,710, Upper Body Support Device, filed on January 30, 2002. Claims 1-6, 8-13, 36-46, 51 and 52 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/3/04 has been entered.

Claim Objections

Claim 8 is objected to because of the following informalities: on line 2, "removably fastening" should be --adapted to removably fasten--. Appropriate correction is required.

Claim 41 is objected to because of the following informalities: on lines 3 and 4, insert --counter-- after "portion of the". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 36-46, 51 and 52 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims include an additional limitations such as leaning on the body support device by "a frontal hip and abdominal region" of the person, leaning causing "a substantial lateral portion of the frontal hip and abdominal region of the person to press against the upper side" and fastening the body support device to "a frontal hip and abdominal region" of the person. However, these limitations are not supported by the original specification or drawings. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6, and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,938,439 to Fried et al. (Fried). Regarding claims 1-3, 6, and 9-13, Fried discloses a body support device (Fig. 1) comprising: an underside portion having a plurality of substantially right angled steps (10a, 10b; see also attached marked copy of Fig. 3) providing a plurality of different placements of the underside portion on an edge portion of an elevated surface, each step having an inner side (at 20, at 14 generally)

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and outer side (16, 18); wherein the underside portion is adapted for frictional engagement with a surface to maintain the body support thereon; and an upper side portion (16 and 18) comprising a flexible, water resistant material (col. 4, lines 19-21) and being adapted for leaning thereon by a waist region of a person; wherein the plurality of steps (10a, 10b) provide a plurality of different height and distance placements of the body support device on the edge portion of the elevated surface and the upper side portion; and wherein placement of either of the steps (10a, 10b) on top of the elevated surface provides upper body support for a person leaning (when standing or seated) on the upper side portion (16, 18).

Claims 1-3, 6, and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,040,757 to Benaway. Regarding claims 1-3, 6, and 9-11, Benaway discloses a body support device (Fig. 4 when inverted) comprising: an underside portion having a plurality of substantially right angled steps (18, 20, 22, 24) providing a plurality of different placements of the underside portion on an edge portion of an elevated surface, wherein the underside portion is adapted for frictional engagement with a surface to maintain the body support thereon, and an upper side portion (12) adapted for leaning thereon by a waist region of a person; wherein the plurality of steps (18, 20, 22, 24) provide a plurality of different height and distance placements of the body support device on the edge portion of the elevated surface and the upper side portion; and wherein placement of either of the steps (18, 20, 22, 24) on top of the elevated surface provides upper body support for a person leaning (when standing or seated) on the upper side portion (12).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 1,725,508 to Bell-Clifford. With regards to claims 4 and 5, Fried discloses the body support as applied above, but does not teach the body support device including a weight. Bell-Clifford discloses a support device (Fig. 1) suspended over an elevated surface (7), wherein the support device includes a weight (2) received in a cavity so as to maintain the support device on the elevated surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified each of the steps (10b, 10a) of the body support device of Fried to include a cavity having a weight therein because one would have been motivated to prevent the support device from slipping off the counter as taught by Bell-Clifford.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 5,199,124 to Klemis. With regards to claim 8, Fried discloses the body support as applied above, but does not teach the body support device including belt-receiving means. Klemis discloses a body support device (10) comprising a means (aperture within 20 as shown in Fig. 4) for receiving a belt (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device of Fried to include a belt receiving means and belt because one would have been motivated to have provided a means for holding the

body support device in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46).

Claims 36-41, 44-46 and 51 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,022,622 to Schaevitz. Schaevitz teaches a body support device and a method of using the body support device comprising: placing a removable body support device (10, 30) on an edge portion of a counter (see Fig. 3); the body support device comprising an underside portion (10) including a first portion (L-shaped portion through which 12 extends) having an inner and outer side and a second portion (18) having an inner and outer side, the underside portion contacting the edge portion of the counter such that the inner side of the first portion is on top of the counter and the inner side of the second portion is on a side (bottom side) of the counter, and further including an upper side portion (30) upon which a person leans (see Fig. 1); wherein the body support device is releasably fastened and frictionally maintained on the edge portion of the counter by adding at least one weight (12, 14, 16) to a portion of the device positioned above the counter; wherein the underside portion (10) is shaped for adjusting the height (member 20 may be inverted during use to adjust height of portion 30) and distance (in Fig. 5 member 20' is angled and member 30' is adjustable along the angled surface so as to adjust the distance of 30' from the edge portion) of the body support device from the edge portion. Schaevitz does not expressly teach a frontal hip and abdominal region of the person pressing against the upper portion during leaning. However, Schaevitz does teach the body support device being used by a user when standing. Therefore, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to have taught leaning against the body support device with the frontal hip and abdominal region of the user because one would have been motivated to provide a support which would absorb pressure from a worker in a standing position and lessen the possibility of fatigue as taught by Schaevitz (col. 1, lines 14-21).

Claims 42, 43 and 52 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaevitz in view of Klemis. With regards to claim 42 and 52, Schaevitz discloses the body support as applied above, but does not teach fastening the body support device to a user. Klemis discloses fastening a body support device (10) to the frontal hip and abdominal region of a user (P). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device of Schaevitz to include a belt for fastening to a user because one would have been motivated to have provided a means for holding the body support device in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46). Regarding claim 43, Schaevitz in view of Klemis does not expressly teach removing the body support device from the counter and placing the device on a second counter; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have removed the device from one counter so as to be placed on another counter because one would have been motivated to provide body support for the user at any specific work surface/location being utilized as inherently taught by Schaevitz.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 6-13, 36-46, 51 and 52 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 1805622 to Goodwin; 2363058 to Gill; 3477673 to Bereday; 4385408 to Rhodes; 4937897 to Barnabie; 5335888 to Thomsen; D414458 to Pagan; 6721978 to Tankersley.

The above references disclose body support devices relevant to present invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.



Naschica S. Morrison
Patent Examiner
Art Unit 3632
5/28/04



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER